

Phan (Migration) [2023] AATA 1860 (16 June 2023)

DECISION RECORD

DIVISION: Migration & Refugee Division

REVIEW APPLICANT: Mr Thanh Hai Phan

VISA APPLICANT: Ms Thi Yen Pham

CASE NUMBER: 2005146

HOME AFFAIRS REFERENCE(S): BCC2019/1056203

MEMBER: M. Edgoose

DATE: 16 June 2023

PLACE OF DECISION: Melbourne

DECISION: The Tribunal remits the application for reconsideration, with the direction that the applicant meets the following criteria for a Subclass 309 visa:

- cl 309.211(2) of Schedule 2 to the Regulations
- cl 309.221 of Schedule 2 to the Regulations.

Statement made on 16 June 2023 at 12:33pm

CATCHWORDS

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – genuine and continuing relationship – evidence of communication – joint travel – support for the sponsor caring for newborn child – joint bank account – decision under review remitted

LEGISLATION

Migration Act 1958, ss 5, 65, 360
Migration Regulations 1994, Schedule 2, cls 309.211, 309.221; r 1.15

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Home Affairs to refuse to grant the applicant a Partner (Provisional) (Class UF) visa under s 65 of the *Migration Act 1958* (Cth) (the Act). The delegate refused to grant the visa on 21 January 2020.
2. The visa applicant applied for the visa on 4 March 2019 on the basis of her relationship with her sponsor, the review applicant. At that time, Class UF contained only one subclass: Subclass 309 (Partner (Provisional)). The criteria for the grant of this visa are set out in Part 309 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
3. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl 309.211(2).
4. On 15 March 2020 the review applicant lodged an Application for Review Form to the Tribunal. Since 15 March 2020 the couple have submitted a substantial amount of new evidence to the Tribunal in support of him being in a genuine relationship with the visa applicant.
5. On 10 January 2023 the couple through their representative submitted the following evidence in support of their relationship. The evidence submitted included completed Form 888's in support of the relationship, statutory declarations in support of the relationship Optus phone records and communication between the couple, travel documents and several medical documents.
6. On 14 February 2023 the visa applicant was granted a 12-month multiple entry FA-600 Visitor Visa. The visa applicant arrived in Australia on 5 April 2023. The 12-month Visitor Visa allows the visa applicant multiple entries of up to 3 months at a time. At time of this decision remains onshore.
7. On 15 June 2023 the couple through their representative submitted further evidence in support of their relationship. The evidence included translated statutory declarations from both the visa applicant and the review applicant, further Form 888's in support of the relationship, photographs of the couple and with third parties onshore in Australia in a variety of locations / settings, travel documents, the visa applicant's Visitor visa document and a copy of their recently opened joint CBA bank account.
8. In light of the new evidence received, the Tribunal is satisfied that the criterion is met and has concluded that the matter should be remitted for reconsideration.
9. At time of this decision the visa applicant remains onshore living with the review applicant. According to her Visitor visa conditions she is required to depart Australia by 5 July 2023.
10. Given the evidence submitted by the couple and their representative the Tribunal is satisfied that the review applicant and visa applicant meet the requirements of reg 1.15A(3). The evidence submitted includes evidence of the financial aspects of the relationship, the nature of the household, the social aspects of the relationship and the nature of the persons' commitment to each other.

11. The Tribunal is therefore satisfied that the couple meet the requirements of s 5F of the Migration Act.
12. In reaching its decision the Tribunal did not consider a hearing to be necessary, as it was able to find in favour of the applicant on the basis of the material before it, pursuant to s 360(2)(a) of the Act.

DECISION

13. The Tribunal remits the application for reconsideration, with the direction that the applicant meets the following criteria for a Subclass 309 visa:
 - cl 309.211(2) of Schedule 2 to the Regulations
 - cl 309.221 of Schedule 2 to the Regulations.

M. Edgoose
Member